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No. 03-1601

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

CITY OF RANCHO PALOS VERDES, *et al.*,
Petitioners,

v.

MARK J. ABRAMS,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether this Court should review the Ninth Circuit's holding that Petitioners failed to rebut the presumption in favor of the availability of § 1983 monetary remedies to a person deprived of federal rights guaranteed by the Telecommunications Act of 1996, where the private right of action in Section 332(c)(7)(B)(v) of the Act provides only for a 30-day limitations period and a right to expedited judicial review, and where the case is on remand to the district court for a determination of the appropriate damages remedy?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iv
BRIEF FOR THE RESPONDENT IN OPPOSITION	1
STATEMENT OF THE CASE	2
REASONS FOR DENYING THE PETITION	9
I. THERE IS NO NEED FOR THIS COURT TO DEPART FROM ITS USUAL PRACTICE OF AWAITING A FINAL JUDGMENT	9
II. THE CIRCUIT SPLIT DOES NOT WARRANT THE GRANTING OF REVIEW AT THIS TIME	11
III. THE DECISION BELOW IS PLAINLY CORRECT	15
IV. PETITIONERS OVERSTATE THE NATIONAL SIGNIFICANCE OF THIS CASE	20
CONCLUSION	22
Appendix A District Court Stay (dated April 16, 2004; filed April 19, 2004)	1a
Appendix B Expedited Judicial Review of Section 332 District Court Cases Cited in the Petition	2a
Appendix C Section 332 District Court Cases by Year of Filing	6a

TABLE OF AUTHORITIES

CASES — Page

Adamo Wrecking Co. v. United States, 434 U.S. 275 (1978) 17
American Constr. Co. v. Jacksonville, Tampa & Key W. Ry. Co., 148 U.S. 372 (1893) 10
AT&T Wireless PCS, Inc. v. City of Atlanta, 210 F.3d 1322, *vacated*, 223 F.3d 1324 (11th Cir. 2000), *op. reinstated*, 250 F.3d 1307, *vacated on reh'g en banc* 260 F.3d 1320 (11th Cir. 2001) 8
Blessing v. Freestone, 520 U.S. 329 (1997) ... 4, 7, 13, 18-19
Brotherhood of Locomotive Firemen & Enginemen v. Bangor & Aroostook R.R. Co., 389 U.S. 327 (1967) 9
Bunting v. Mellen, 124 S. Ct. 1750 (2004) 13
City of Littleton v. Z.J. Gifts D-4, L.L.C., No. 02-1609, 2004 U.S. LEXIS 4026 (June 7, 2004) 17
City of Rancho Palos Verdes v. Abrams, 101 Cal. App. 4th 367, 124 Cal. Rptr. 2d 80 (Ct. App. 2002) 4-5
Dickinson v. Petroleum Conversion Corp., 338 U.S. 507 (1950) 10
Franklin v. Gwinnett Cty. Pub. Schs., 503 U.S. 60 (1992) 15
Freedman v. Maryland, 380 U.S. 51 (1965) 17
FW/PBS Inc. v. City of Dallas, 493 U.S. 215 (1990) 17
Gonzaga Univ. v. Doe, 536 U.S. 273 (2002) 4, 16
Hanover Star Milling Co. v. Metcalf, 240 U.S. 403 (1916) 11
Keaukaha-Panaewa Cmty. Ass'n v. Hawaiian Homes Comm'n, 739 F.2d 1467 (9th Cir. 1984) 16
Lackey v. Texas, 514 U.S. 1045 (1995) 14

TABLE OF AUTHORITIES—Continued

Page

Land v. Dollar, 330 U.S. 731 (1947) 10
LeBoeuf, Lamb, Greene & MacRae, L.L.P. v. Worsham, 185 F.3d 61 (2d Cir. 1999) 9
Liberty Mut. Ins. Co. v. Wetzel, 424 U.S. 737 (1976) 9
Middlesex Cty. Sewerage Auth. v. National Sea Clammers Ass'n, 453 U.S. 1 (1981) 8, 18, 19
Nextel Partners Inc. v. Kingston Tp., 286 F.3d 687 (3d Cir. 2002) ..... *passim*
PrimeCo Pers. Comms., Ltd. P'Ship v. City of Mequon, 352 F.3d 1147 (7th Cir. 2003) ..... *passim*
Smith v. Robinson, 468 U.S. 992 (1984) 16, 18
United States v. General Motors Corp., 323 U.S. 373 (1945) 10
Virginia Military Inst. v. United States, 508 U.S. 946 (1993) (Scalia, J., op.) 9, 10, 15
Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498 (1990) 16
Wright v. City of Roanoke Redev. & Hous. Auth., 479 U.S. 418 (1987) 16

STATUTES AND OTHER AUTHORITIES

42 U.S.C. § 1983 3-4
47 U.S.C. § 332(c)(7)(B)(iii) 3
47 U.S.C. § 332(c)(7)(B)(v) 1
H.R. Rep. No. 104-204, pt. 1 (1995) 2
H.R. Conf. Rep. No. 104–458 (1996) 3, 19
1 Dan B. Dobbs, *Law of Remedies: Damages - Equity - Restitution* § 1.1 (2d ed. 1993) 16
Robert L. Stern *et al.*, *Supreme Court Practice* (8th ed. 2002) 9, 10, 11

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BRIEF FOR THE RESPONDENT IN OPPOSITION

Section 704(c)(7)(B)(v) of the Telecommunications Act of 1996 ("TCA"), codified at 47 U.S.C. § 332(c)(7)(B)(v), allows a person (here, Respondent Mark J. Abrams ("Abrams")) claiming a violation by a state or local government of certain provisions of the TCA affecting wireless communications facilities to file an action in court. The statute requires filing "within 30 days" of the claimed violation, and further provides that the reviewing court "shall hear and decide such action on an expedited basis." *Id.* It says nothing about damages, injunctions, attorneys fees or other types of remedies. The United States Court of Appeals for the Ninth Circuit—invoking the presumption repeatedly recognized by this Court in favor of the availability of remedies under 42 U.S.C. § 1983 for violations of federal statutory rights—held that the City of Rancho Palos Verdes failed to overcome the presumption in its attempt to prove that Congress intended to foreclose resort to § 1983 through creation

of a "comprehensive remedial scheme" in the TCA. Petitioners' Appendix ("Pet. App.") at 12a. The Ninth Circuit held, accordingly, that Abrams was entitled to § 1983 damages and remanded to the district court for further proceedings on that issue. *Id.*

Respondent respectfully submits that this Court should not grant review. As a threshold matter, there has been no final judgment because this case is on remand for a determination as to damages. No unusual circumstance is present to cause this Court to depart from its general rule to stay its hand until final judgment has been issued. The decisions from the Third and Seventh Circuits relied upon by Petitioners do not conflict with the decision below to nearly the degree Petitioners assert, and in any event do not warrant the granting of review. As for the merits, the Ninth Circuit's decision is entirely faithful to the language of the TCA, Congressional intent and this Court's precedents, and is plainly correct. Finally, Petitioners' assertion that this case presents a question of pressing national importance is overstated and unpersuasive.

STATEMENT OF THE CASE

In 1996, Congress amended the Communications Act of 1934, 47 U.S.C. § 151 *et seq.*, by enacting the TCA for the purpose of promoting competition, reducing monopolies, and deregulating telecommunications. H.R. Rep. No. 104-204, pt. 1, at 65 (1995).[1] Concerned that zoning decisions by local governments were unreasonably restricting the growth of (and competition among) cellular telephone and other personal wireless services, Congress sought to strike a balance in Section 704 of the TCA between preservation of local authority over antenna tower siting and similar zoning issues,

[1] "The primary purpose [of the TCA] . . . is to increase competition in telecommunications markets and to provide for an orderly transition from a regulated market to a competitive and deregulated market." *Id.* at 68.

and promotion of competitive telecommunications services. Accordingly, in § 332(c)(7), captioned "Preservation of local zoning authority," Congress placed limits on, but did not entirely preempt, the authority of local governments over the construction and siting of wireless facilities.

Among other limitations, Congress required state and local government decisions denying requests for land use permits for wireless service facilities to be "in writing and supported by substantial evidence contained in a written record." 47 U.S.C. § 332(c)(7)(B)(iii). As an additional limitation on the zoning authority of local governments, a personal wireless service provider claiming a violation of the requirements of § 332(c)(7)(B) may file suit in court under the expedited review provisions of § 332(c)(7)(B)(v), subject to a 30-day statute of limitations. As previously noted, the statute is entirely silent as to the type or scope of remedy that the reviewing court may consider as relief for proof of a violation.[2]

As the Ninth Circuit observed, Pet. App. at 3a, § 1983 is a remedial provision. It provides in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights . . . secured by the Constitution and laws, shall be liable to the party injured in an action

[2] A claimant may also petition the Federal Communications Commission ("FCC") for relief under § 332(c)(7)(B)(v), but this administrative remedy is restricted to claims that the challenged zoning decision was improperly based on alleged "environmental effects of radio frequency emissions" under § 332(c)(7)(B)(iv). The Conference Report discussing § 332 stressed the intent of Congress to foreclose all administrative remedies for claimed violations of the TCA except in the limited circumstance of a claimed violation of clause (iv). H.R. Conf. Rep. No. 104-458, at 208 (1996).

> at law, suit in equity or other proper proceeding for redress . . . .

42 U.S.C. § 1983. To obtain remedies pursuant to § 1983, a plaintiff must first establish a federal "right." *Blessing v. Freestone*, 520 U.S. 329, 340 (1997). A plaintiff who satisfies the initial burden of proving entitlement to a federal statutory right creates a rebuttable presumption of a right to § 1983 remedies. *Id.* at 341; *Gonzaga Univ. v. Doe*, 536 U.S. 273, 284 (2002). It is undisputed that the TCA grants enforceable "rights." Pet. App. at 4a. It is also undisputed that the City has violated Abrams' rights under the TCA.[3]

Abrams is an amateur radio operator who is also engaged professionally in the provision of personal wireless services (which includes commercial, mobile radio services). His amateur radio station is located at his residence within the municipality of Petitioner Rancho Palos Verdes, California (the "City"). Pet. App. at 2a, 22a-23a. He is licensed by the FCC for both amateur operation and the provision of personal wireless services. Pet. App. at 2a, 22a; Court of Appeals Supplemental Excerpts of Record ("C.A. Supp. E.R.") C.A. Supp. E.R. at 008. Abrams' home is located high on a mountain ridge, a key location for receiving and sending radio signals to the Los Angeles basin and other coastal areas. C.A. Supp. E.R. at 010. For several years, Abrams and the City have been engaged in various disputes regarding the construction and use of radio antennae on Abrams' property. *See generally* Certified Administrative Record ("Admin. R.") at 01-1678 (Vols. 1-6). These disputes resulted in litigation in both the state and federal courts, in which Abrams' position has been largely upheld. *City of Rancho Palos*

[3] The City initially filed an appeal from the district court's holding dated January 9, 2002, but withdrew that appeal after the Court of Appeals of California, Second Appellate District issued its decision dated August 20, 2002 in *City of Rancho Palos Verdes v. Abrams*.

Verdes v. Abrams, 101 Cal. App. 4th 367, 370, 124 Cal. Rptr. 2d 80, 82 (Ct. App. 2002); Pet. App. at 24a.

In 1990, the City issued Abrams a permit to construct an antenna on his property for his amateur use—that is, for passive reception and retransmission of messages on frequencies designated as "amateur." Pet. App. at 22a, 54a. Several years later, the City took exception to the height of the antenna constructed by Abrams, and, in 1998, claimed for the first time that Abrams was using his antenna for what the City termed "commercial purposes" (*i.e.*, use of frequencies designated by the City as "commercial") in violation of the City's permit. *Id.* at 54a. Abrams denied that the City had any basis for its claims, asserting that the FCC had exclusive authority to regulate the radio frequencies that his antenna received and transmitted. Admin. R. at 340-49. In April 1999, the City initiated suit against Abrams in Los Angeles Superior Court, which issued a preliminary injunction in September 1999, and a permanent injunction in May 2001, preventing Abrams from using his antenna for commercial use unless and until he obtained a Conditional Use Permit ("CUP"). Pet. App. at 23a, 55a.

Abrams appealed. On August 20, 2002, the Court of Appeals of California, Second Appellate District, reversed the Superior Court and overturned the injunction, holding that the City's claimed authority to regulate Abrams' use of his antenna for commercial purposes was preempted by the FCC's exclusive jurisdiction over radio communications and its comprehensive licensing scheme. *Abrams*, 101 Cal. App. 4th at 370, 124 Cal. Rptr. at 82.

Although Abrams disputed the City's claimed jurisdiction over the commercial use of his wireless facilities, Abrams nevertheless complied with the suggestion of the Superior Court judge that he apply for a CUP as a means of resolving the issue. Pet. App. at 23a. Abrams did so in July 1999, shortly after the City filed its state court action. Admin. R. at

16-39. His application stressed that the addition of certain radio frequencies (allowing use for commercial purposes) to the amateur radio frequency allocations would not involve any change, addition or modification whatsoever to the existing antenna facilities, Abrams' home, or the surrounding area. *Id.* at 17-18. More than a year later, and after repeated requests for additional information, in August 2000 the City eventually denied Abrams' CUP application. *Id.* at 43-46, 72-75, 101, 945-51; C.A. Supp. E.R. at 013.

On August 24, 2000—within the 30-day statute of limitations specified in the TCA—Abrams filed this action in the U.S. District Court for the Central District of California, alleging that the City's denial of his CUP application violated the TCA. C.A. E.R. at 1-2. Abrams also claimed a right to damages under 42 U.S.C. § 1983 and to attorneys fees under 42 U.S.C. § 1988. *Id.* at 14-15. Approximately 17 months later, in its order dated January 9, 2002, the district court agreed with Abrams that the City had violated the TCA. The court held that the City's decision to reject Abrams' CUP application to add passive reception and retransmission of certain radio frequencies via an existing, unmodified antenna structure was not supported by substantial evidence as required by § 332(c)(7)(B)(iii). Pet. App. at 18a-26a. The district court remanded the matter to the City Council, ordering the City to grant Abrams a CUP subject to reasonable conditions. *Id.* at 14a. In its Judgment of Injunction dated March 18, 2002, the court denied Abrams' request for § 1983 remedies, stating only that the TCA subsumed such remedies. Pet. App. at 14a-15a. The court also denied Abrams' corresponding request for § 1988 relief. *Id.* at 15a.

Abrams appealed the issue of §§ 1983 and 1988 relief to the Ninth Circuit. The City did not pursue an appeal of the district court's decision that the City had violated Abrams' rights under the TCA. The Ninth Circuit reversed as to the

§ 1983 issue.[4] Pet. App. at 1a-12a (T.G. Nelson, joined by Kozinski, J. and the Hon. Jane A. Restani, U.S. Ct. of Int'l Trade, by designation).

The Ninth Circuit began its analysis by stressing the "rebuttable presumption" in favor of § 1983 remedies established by this Court in *Blessing*. Pet. App. at 3a-4a. The court then noted that it was undisputed that the TCA grants enforceable "rights." *Id.* at 4a. Thus, the court stated, the only question was whether the City could overcome the presumption that Abrams was entitled to § 1983 damages for violation of his TCA rights by proving that Congress, expressly or by implication, foreclosed § 1983 remedies. The court found "no support" in the language of the TCA that Congress expressly foreclosed § 1983. *Id.* Therefore, the court examined the next prong in the analysis required by *Blessing*: whether Congress had impliedly foreclosed § 1983 remedies by creating a comprehensive remedial scheme in the TCA that was incompatible with individual enforcement under § 1983, thereby evincing Congress' intent to "close the door on § 1983 liability." *Id.* at 4a-5a (*quoting Blessing*, 520 U.S. at 348). The court held that the City had not carried its burden.

The Ninth Circuit held that "the statute grants no remedies beyond procedural rights," which "are insufficient for us to conclude that the TCA contains a remedial scheme that closes the door on § 1983 liability." Pet. App. at 6a. The 30-day limitation period, stated the court, is not a "remedy" in any sense because it "imposes a burden on an aggrieved plaintiff, not a benefit." *Id.* at 8a. The only "benefit" identified in the statute by the Ninth Circuit was expedited judicial review, but the court found that to be a procedural mechanism that "does

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[4] The court stated that its holding made it unnecessary to address Abrams' argument that he was entitled to recover attorneys fees under § 1988 for a due process violation. Pet. App. at 12a n.49.

nothing to remedy a TCA violation in itself." *Id.* at 8a-9a. The Ninth Circuit pointed out that: "Significantly, a court can fully comply with all of the TCA's provisions before it determines liability. Thus, the TCA contains *procedural*, rather than *remedial*, provisions." *Id.* at 9a (emphasis in original). The Ninth Circuit explained that the cases (*see, e.g., Middlesex County Sewerage Authority v. National Sea Clammers Association*, 453 U.S. 1 (1981)) in which courts have found "that Congress implied its intent to foreclose resort to § 1983 remedies presented remedial schemes more comprehensive than, and thus distinguishable from, the TCA." Pet. App. at 6a.

The Ninth Circuit found no incompatibility between the procedural mechanisms of the TCA and § 1983. Contrary to the Petitioners' repeated gross mischaracterization, Pet. at 24, 28, the Ninth Circuit did *not* rule that the 30-day limitations period or expedited review provisions of the TCA would be inapplicable to a TCA plaintiff claiming § 1983 damages. In fact, the court held just the opposite: "Congress can limit the time in which a plaintiff can file for relief, and require an expeditious review in any court of competent jurisdiction, without inadvertently limiting the plaintiff's remedies at the same time." Pet. App. at 9a.

Finally, the Ninth Circuit—like the Eleventh Circuit in *AT&T Wireless PCS, Inc. v. City of Atlanta*, 210 F.3d 1322, *vacated*, 223 F.3d 1324 (11th Cir. 2000), *op. reinstated*, 250 F.3d 1307, *vacated on reh'g en banc*, 260 F.3d 1320 (11th Cir. 2001) —reasoned that the savings clause in § 601(c)(1) of the TCA forbidding the impairment of any federal "law" affirmed Congress' intent not to foreclose § 1983 remedies. Pet. App. at 10a-12a. The Ninth Circuit—departing from the Third Circuit's reasoning in *Nextel Partners Inc. v. Kingston Township*, 286 F.3d 687 (3d Cir. 2002)—concluded that the City had failed to rebut the presumption in favor of § 1983

remedies and that the district court should award § 1983 damages, and remanded to the district court. *Id.* at 12a.

On April 16, 2004, the district court stayed all proceedings based on the City's representation that it would seek a writ of certiorari. Respondent's Appendix ("Resp. App.") at 1a. Thus, the district court has not yet issued a final judgment on damages.

REASONS FOR DENYING THE PETITION

I. THERE IS NO NEED FOR THIS COURT TO DEPART FROM ITS USUAL PRACTICE OF AWAITING A FINAL JUDGMENT

Because of the Ninth Circuit's remand to the district court for a determination as to damages, the case before the Court is not final, and thus the petition should be denied.[5] As a general rule, this Court awaits final judgment in the lower courts before exercising its certiorari jurisdiction. *See, e.g., Virginia Military Inst. v. United States*, 508 U.S. 946, 946 (1993) ((Scalia, J., op.) denying certiorari on grounds that district court had not yet determined appropriate remedy as to admission of women to men-only military college); *Brotherhood of Locomotive Firemen & Enginemen v. Bangor & Aroostook R.R. Co.*, 389 U.S. 327, 328 (1967) (because case was on remand for further consideration of issues of contempt and imposition of fines, it was "not yet ripe for review by this Court"); Robert L. Stern *et al.*, *Supreme Court Practice* § 4.18 at 258-61 (8th ed. 2002). The Court generally stays its hand because review prior to final judgment may

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[5] A judgment of liability prior to the award of damages or other relief is plainly not final. *See, e.g., Liberty Mut. Ins. Co. v. Wetzel*, 424 U.S. 737, 744 (1976) (judgment on liability not "final" within meaning of 28 U.S.C. § 1291 "where assessment of damages or awarding of other relief remains to be resolved"); *LeBoeuf, Lamb, Greene & MacRae, L.L.P. v. Worsham*, 185 F.3d 61, 64 (2d Cir. 1999).

prolong litigation unnecessarily and result in piecemeal litigation. *Dickinson v. Petroleum Conversion Corp.*, 338 U.S. 507, 511-12 (1950).

As *Virginia Military Institute* and *Brotherhood* illustrate, the Court's usual practice of awaiting final judgment prior to review applies to cases in which the circuit court remanded to the district court for further action related to remedies. Even in *Virginia Military Institute*—a highly visible case involving constitutional and cultural issues of unquestionable national importance—the Court adhered to the general rule regarding finality. In the opinion accompanying denial of the petition, Justice Scalia stated:

> This present petition . . . seeks our intervention before the litigation below has come to final judgment. The Court of Appeals . . . remanded the case to the District Court for determination of an appropriate remedy. . . . We generally await final judgment in the lower courts before exercising our certiorari jurisdiction. . . . I think it is prudent to take that course here.

508 U.S. at 946.

The Court on occasion grants certiorari in the absence of a final judgment when "it is necessary to prevent extraordinary inconvenience and embarrassment in the conduct of the cause,"[6] or if resolution of the issue is "'fundamental to the further conduct of the case.'"[7] Those exceptions are clearly

[6] Stern *et al.*, *supra*, § 4.18 at 258 (*citing American Constr. Co. v. Jacksonville, Tampa & Key W. Ry. Co.*, 148 U.S. 372, 384 (1893) for this proposition).

[7] *Land v. Dollar*, 330 U.S. 731, 734 n.2 (1947) (*quoting United States v. General Motors Corp.*, 323 U.S. 373, 377 (1945)). For example, in *General Motors*, the Court found that it was fundamental to the further conduct of the case to review a case on remand when the core issue concerned the proper interpretation of the takings clause of the Fifth Amendment. 323 U.S. at 377. Resolution of the meaning of "taken" and "just compensation" was "fundamental" prior to further proceedings at trial in the district court. *Id.*

not present here. This case is on remand to the district court for a routine damages determination – a function squarely within the province of the trial court. Moreover, the narrow dispute over remedies, exclusively financial in nature, may resolve itself without further judicial intervention. There is simply no need for this Court to insert itself in this dispute before the abstract question of a right to damages is expressed in a concrete and final form.

The Court also, on occasion, agrees to review non-final judgments when a circuit split is of sufficient importance to warrant this Court's departure from its general rule in favor of finality.[8] As discussed below, that exception also does not apply to this case and is not a sufficient reason for the Court to grant certiorari here.

II. THE CIRCUIT SPLIT DOES NOT WARRANT THE GRANTING OF REVIEW AT THIS TIME

Petitioners have substantially overstated the depth and breadth of the circuit split regarding the compatibility of § 1983 with the TCA.

In a strenuous effort to paint a picture of conflict between the TCA and § 1983 when there is none, Petitioners grossly mischaracterize the Ninth Circuit's holding and draw a false contrast between it and the Third Circuit's opinion in *Nextel*. After discussing the short limitations period and expedited judicial review features of the TCA, Petitioners state: "The Ninth Circuit's decision to allow tower-siting claims to be asserted under Section 1983—*without required expedition and subject to a four-year limitations period* [–] fatally undermines that carefully crafted scheme." Pet. at 24 (citations omitted; emphasis supplied).[9] Petitioners then quote from

[8] *Hanover Star Milling Co. v. Metcalf*, 240 U.S. 403, 408-09 (1916); Stern *et al.*, *supra*, § 4.18 at 260.

[9] Petitioners repeat this characterization later in their brief to support their argument that the Ninth Circuit's decision, if allowed to stand, will

Nextel to the effect that allowing a TCA plaintiff seeking § 1983 relief to bypass the limitations and judicial review provisions of § 332(c)(7)(B)(v) would indeed be incompatible with the TCA. *Id.* (*quoting and discussing Nextel*, 286 F.3d at 695). But, as previously noted, the Ninth Circuit held precisely the opposite—that a TCA plaintiff seeking § 1983 remedies *would be* subject to the 30-day limitation period and *would be* entitled to expedited judicial review under the TCA.[10] The Ninth Circuit's analysis in that regard was a central reason why it found no conflict between the procedural provisions of the TCA and the remedies available under § 1983. Pet. App. at 9a.[11] *A fortiori*, the so-called "conflict" that Petitioners attempt to create between the Third and Ninth Circuits on this point is illusory.

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open the floodgates to litigation: "And the lure of damages and attorney's fees, *as well as the ability to avoid the Communications Act's short limitations period*, all but guarantee that the resulting lawsuits will, absent this Court's intervention, include Section 1983 claims with increasing frequency." Pet. at 28 (emphasis supplied).

[10] It is instructive that, while Abrams complied with the 30-day filing deadline in asserting his TCA and § 1983 claims in the district court below, the plaintiff in *Nextel* did not. *Nextel*, 286 F.3d at 691.

[11] The Ninth Circuit's full discussion of the point was as follows:

> Second, the TCA's provisions are compatible with § 1983's remedies. As we said, the TCA's provisions are procedural in nature—not remedial. Congress can limit the time in which a plaintiff can file for relief, and require an expeditious review in any court of competent jurisdiction, without inadvertently limiting the plaintiff's remedies at the same time. Were we to consider the TCA's procedural provisions sufficiently comprehensive to foreclose § 1983 remedies, we would prevent Congress from ever providing statutes of limitations or other procedural provisions without also defining specific remedies. Such a holding would unnecessarily limit § 1983 remedies to those generic statutes that grant a right and nothing else. We decline to take that path. The TCA's procedural provisions are compatible with § 1983's remedial provisions.

Pet. App. at 9a.

The conflict claimed by Petitioners between the Third and Ninth Circuits is more apparent than real for another reason: the statements in *Nextel* regarding the availability of § 1983 remedies to TCA plaintiffs are dicta. Before reaching the § 1983 issue, the Third Circuit first held that the appellant (Nextel Partners Inc.) did not have an actionable claim against the local government for violation of the TCA.[12] Because appellant had not established a substantive TCA violation entitling it to relief under any theory, there was no reason for the Third Circuit to reach the § 1983 issue. That is because, as previously discussed, a plaintiff claiming entitlement to relief under § 1983 must first establish a violation of his federal "rights." *Blessing*, 520 U.S. at 340. Here, Abrams did that; in *Nextel*, appellant did not. To be sure, the Third Circuit in *Nextel* characterized its pronouncements on the interaction between § 1983 and the TCA as a "holding" (and the Ninth Circuit below acquiesced in that characterization, Pet. App. at 8a). But saying so does not make it so. Because it was unnecessary for the Third Circuit to reach the § 1983 issue, its view on that subject is more properly characterized as an advisory opinion. As this Court recently instructed: "We sit, after all, not to correct errors in dicta; '[t]his Court reviews judgments, not statements in opinions.'" *Bunting v. Mellen*, 124 S. Ct. 1750, 1754 (2004) (citation omitted).

In its analysis of the TCA's savings clause, the Ninth Circuit cited with approval the Eleventh Circuit's vacated opinion in *AT&T Wireless PCS*. Petitioners argue that the Eleventh Circuit case is further evidence of the split in the circuits. Pet. at 19. However, because that decision has been vacated, it is not binding, lessening the circuit split. This

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[12] The court ruled that, because Nextel Partners had not applied for a building permit, there had been no "failure to act" by the local government triggering a violation of § 332(c)(7)(B)(v). The court held, in the alternative, that the TCA claim was moot because the municipal ordinance in question had been amended. 286 F.3d at 692-93.

leaves only two binding circuit opinions in apparent conflict on the narrow issue at bar, the Ninth Circuit's and that of the Seventh Circuit. *PrimeCo Pers. Comms., Ltd. P'Ship v. City of Mequon*, 352 F.3d 1147 (7th Cir. 2003) ("*Verizon Wireless*").

The Seventh Circuit's decision does not create the type of conflict requiring resolution by this Court. First, it relies on the dicta of the Third Circuit's decision in *Nextel*. *Id.* at 1152. Second, its focus was on the availability of attorneys fees under § 1988 (not § 1983 damages as in the decision below) and associated implications for the "American rule" against award of fees to the prevailing party—an issue not considered by the Ninth Circuit nor raised by the parties below. In this regard, the court made plain that Verizon was seeking an extremely broad holding on the general availability of such fees that the Ninth Circuit's analysis would not support: "Verizon wants us to hold that any time Congress creates a right that is enforceable against state or local officials or agencies, section 1983, and its companion, section 1988, come in the door and the American rule goes out the window." *Id.* The court was also motivated by a public policy concern regarding corporate largesse inapplicable to a case, as here, involving an individual. *Id.* In sum, the circuit split is of less moment than Petitioners claim.

Petitioners also point to a split in views at the district court level, but this factor, in Respondent's view, counsels in favor of denying review. Allowing other courts and circuits to consider the issue, in a variety of factual situations, might lead to a resolution of the split—or, alternatively, to a more clear-cut consensus as to just what the issues are.[13] Of

[13] *See, e.g., Lackey v. Texas*, 514 U.S. 1045, 1045 (1995) ("Though the importance and novelty of the question presented by this certiorari petition are sufficient to warrant review by this Court, those factors also provide a principled basis for postponing consideration of the issue until after it has been addressed by other courts").

course, a denial of review at this stage does not preclude Petitioners from raising the issue after final judgment. *Virginia Military Inst.*, 508 U.S. at 946.

A final consideration—suggested by language in Petitioners' own brief as well as by the Seventh Circuit's opinion in *Verizon Wireless*—counsels against granting review in this case. Quoting *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60, 70-71 (1992), Petitioners point out that "federal courts adjudicating claims under statutes that create a cause of action but are silent about remedies are presumed to 'have the power to award any appropriate relief.'" Pet. at 22. Similarly, the Seventh Circuit observed in *Verizon Wireless* that "a conferral [of a right to sue to enforce the TCA] is presumed to entitle a successful plaintiff to the usual remedies . . . which include damages as well as injunctive relief." 352 F.3d at 1152-53 (citation omitted).[14] If, as Petitioners imply and the Seventh Circuit ruled, damages are available directly under § 332(c)(7)(B)(v) of the TCA, it is of less than urgent importance for this Court to resolve a circuit split on whether damages are also available via § 1983.

III. THE DECISION BELOW IS PLAINLY CORRECT

Review in this case is also unnecessary because the Ninth Circuit's decision is plainly correct and presents a far more persuasive analysis of the interaction between § 1983 and the TCA than the decisions of the Third and Seventh Circuits.

There is no dispute that the burden lies with the City to overcome the rebuttable presumption in favor of Abrams'

[14] The Third Circuit in *Nextel* declined to decide the question of whether damages are directly available under the TCA. 286 F.3d at 695 n.6. No circuit court of appeals other than the Seventh Circuit has addressed that issue, which is another reason why this Court should stay its hand pending further development of the case law in the lower courts.

entitlement to § 1983 relief. On this score, the Third and Ninth Circuits are in agreement. *See Nextel*, 286 F.3d at 694; Pet. App. at 3a-4a; *see also Gonzaga Univ.*, 536 U.S. at 284. This Court has cautioned that "[w]e do not lightly conclude that Congress intended to preclude reliance on § 1983 as a remedy for the deprivation of a federally secured right." *Wright v. City of Roanoke Redev. & Hous. Auth.*, 479 U.S. 418, 423–24 (1987) (*quoting Smith v. Robinson*, 468 U.S. 992, 1012 (1984)); *Wilder v. Virginia Hosp. Ass'n*, 496 U.S. 498, 520 (1990). The presumption has been characterized as weighty, requiring a "strong government showing of Congressional intent to foreclose alternative remedies before ruling out a section 1983 claim." *Keaukaha-Panaewa Cmty. Ass'n v. Hawaiian Homes Comm'n*, 739 F.2d 1467, 1471 (9th Cir. 1984).

There can likewise be no dispute that § 332(c)(7)(B)(v) of the TCA does not, on its face, provide for damages, injunctive relief, attorneys fees or the other forms of relief that are universally considered "remedial" in nature. Thus, Petitioners' attack on the decision below is based on the argument that a right to file in court, a right to expedited judicial review, and a severely abbreviated limitations period constitute a "comprehensive remedial scheme" sufficient to overcome the presumption in favor of § 1983. Petitioners are wrong. As the Ninth Circuit correctly held, this is a *procedural* scheme that is fulfilled before the issue of "remedy" is even reached.[15]

The 30-day limitations period requires only the briefest of discussion. Even Petitioners do not take issue with the Ninth Circuit's conclusion that a short limitations period, which "imposes a burden on an aggrieved plaintiff, not a benefit," is

[15] "Procedural law deals with process of getting from right to remedy. . . . For most purposes . . . remedies questions and remedies law are quite distinct from both substance and procedure." 1 Dan B. Dobbs, *Law of Remedies: Damages - Equity - Restitution* § 1.1 at 2 (2d ed. 1993).

not a remedy. Pet. App. at 8a. Therefore, Petitioners' argument rests on the notion that a right to seek judicial review o n an expedited basis is a "comprehensive remedial scheme" trumping the presumption in favor of § 1983. But, as the Ninth Circuit persuasively concluded, "an expedited decision does nothing to remedy a TCA violation in itself." *Id.* at 8a-9a. The Ninth Circuit's characterization of this right as procedural is nothing new. This Court, for example, routinely frames the mechanisms of filing deadlines and expedited judicial review as procedures, not remedies. Last month Justice Breyer explained that "ordinary court *procedural rules and practices* . . . provide reviewing courts with judicial tools sufficient to avoid delay-related First Amendment harm. Indeed, where necessary, courts may arrange their schedules to 'accelerate' proceedings." *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, No. 02-1609, 2004 U.S. LEXIS 4026, at *3 (June 7, 2004) (emphasis supplied). Other decisions of this Court are to the same effect. *See, e.g., FW/PBS Inc. v. City of Dallas*, 493 U.S. 215, 223 (1990) (describing expedited judicial review as a "procedural safeguard"); *Freedman v. Maryland*, 380 U.S. 51, 59-60 (1965) (describing expedited judicial review as a "procedural safeguard"); *see also Adamo Wrecking Co. v. United States*, 434 U.S. 275, 284-85 (1978) (describing filing deadline imposed by statute as a "review procedure").[16]

Petitioners' argument that a statutory right to expedited judicial review is "remedial" is further undercut by the discretion retained by the trial court in interpreting and implementing that right, as illustrated by the actual amount of

[16] The legislative history cited by Petitioners, Pet. at 22, cuts against, not in favor of, their argument. The Conference report states that Congress intended § 332(c)(7)(B)(v) to "'provide[] a mechanism for judicial relief.'" *Id.* (citation omitted). "Mechanism" plainly implies that expedited judicial review is procedural, *i.e.*, only a means to obtain an end, and not the ultimate relief itself.

time it takes for TCA litigants to obtain a decision from the courts. A review of the district court TCA cases cited by Petitioners reveals that the average time from filing to receiving a district court decision was approximately 10 months, with several languishing for more than a year.[17] Resp. App. at 2a-5a. Indeed, Abrams' case below took 17 months to decide in the district court—hardly an example of a swift resolution. C.A. E.R. at 1, 116.

Petitioners' argument is hurt, not helped as they claim (Pet. at 22), by the two cases in which this Court has determined that a statutory scheme is sufficiently comprehensive to preclude § 1983 remedies. *Sea Clammers*, 453 U.S. at 20; *Robinson*, 468 U.S. at 1009. The Ninth Circuit discussed *Sea Clammers* at some length. Pet. App. at 6a. In *Sea Clammers*, this Court stated that the statutes at issue had "unusually elaborate enforcement provisions" allowing for civil penalties, litigation costs, injunctive relief, and suspensions or revocations. 453 U.S. at 13-15.[18] In marked contrast, § 332(c)(7)(B)(v) specifies *none* of those remedies.

In *Robinson*, the Court emphasized the "carefully tailored" administrative scheme in the relevant statute, which provided extensive local and state agency relief, followed by judicial review. *Id.* at 1009-11. However, in § 332(c)(7) of the TCA, Congress *eliminated* all administrative remedies except for the extremely limited right to petition the FCC regarding adverse health effects under clause (iv).[19] Where such

[17] This statistic does not encompass time elapsed during appeals and remands.

[18] The Seventh Circuit in *Verizon Wireless* (relied upon so heavily by Petitioners for other purposes) agreed that *Sea Clammers* "is distinguishable because the [TCA] is silent on remedies beyond merely conferring a right to sue to enforce the Act." 352 F.3d at 1152.

[19] The legislative history made clear Congress' intent to restrict nearly all such relevant administrative remedies. "It is the intent of the conferees that other than under section 332(c)(7)(B)(iv) of the Communications Act

elaborate and detailed administrative schemes do not exist, the Court has declined to hold that a statute precludes enforcement via § 1983. *Blessing*, 520 U.S. at 347-48.

Finally, the Ninth Circuit's analysis of the TCA's savings clause, which it interpreted to affirm Congress' intent to preserve § 1983 remedies and which it found more sweeping than the savings clauses addressed in *Sea Clammers*, Pet. App. at 10a-12a, is persuasive and provides no basis for questioning the decision. Petitioners cite a collection of provisions from other parts of the Communications Act and the TCA—none targeting wireless communications—specifying various remedies such as criminal and civil fines, prison terms, damages, and attorneys fees in support of their argument that Congress "provided precisely the remedies it considered appropriate . . . and supplant[ed] any remedy that otherwise would be available under § 1983" for violations of the statute. Pet. at 21-22 (*quoting Sea Clammers*, 453 U.S. at 14-15, 20-21). Far from supporting Petitioners' argument, the cited provisions undermine it. First, they list specific remedies such as damages and penalties, in contrast to the unrelated provisions of § 332(c)(7)(B)(v) relating to wireless communications. Second, all of the remedies cited by Petitioners are police power functions or provide for private redress in situations where *non-governmental* persons violate the statute. Section 1983 on its face is inapplicable to non-governmental violations. Congress had to specify remedies in the statute itself to address such matters as prohibitions on telefax spamming (§ 227(b)(1)(C), (3)) and internet communications harmful to minors (§ 231). In stark contrast, § 332(c)(7) provides a private right of action for violations of

of 1934 as amended . . . the courts shall have exclusive jurisdiction over all other disputes arising under this section. Any pending Commission rulemaking concerning the preemption of local zoning authority over the placement, construction or modification of CMS facilities should be terminated." H.R. Conf. Rep. No. 104-458, at 208.

the TCA by the *government*—thereby implicating § 1983. Especially in light of the TCA's savings clause, the overall statutory scheme is entirely consistent with the Ninth Circuit's holding that Congress did not intend § 332(c)(7)(B)(v) to supplant the governmental-injury damages provisions of § 1983.

IV. PETITIONERS OVERSTATE THE NATIONAL SIGNIFICANCE OF THIS CASE

The case before the Court is not important enough to warrant granting a writ of certiorari, especially in the face of the Court's general practice against review of cases that are not final. Contrary to Petitioners' contention that "the federal courts are awash with Section 332(c)(7) disputes," Pet. at 26, litigation has dwindled to a mere trickle. An analysis of the 17 federal cases cited by the Petition (*id.* n.7) illustrates the point. Fourteen of these cases were originally filed in the 1990s, when the TCA—enacted in 1996—was new and relatively untested. Resp. App. at 7a-13a. Only three were filed after the year 2000. A more thorough analysis of all reported § 332(c)(7) cases demonstrates that there has been a steep decline in the number of such cases filed in federal district court. In 1997, the year after the TCA was enacted, at least 38 Section 332(c)(7) cases were filed. By contrast, less than 10 were filed in 2003. *Id.* at 17a-18a.

This sharp decline is due to the effectiveness of the TCA. Local governments and telecommunications providers now increasingly work together to avoid disputes under the TCA. "A survey by the American Planning Association, for example, showed that 92 percent of applications for cellular towers were approved by local governments, most within 60 days." Admin. R. at 1054. Rather than turning to the courts, local governments and providers have learned to compromise to accommodate both the needs of providers and the preferences of local communities. *See id.* at 1057-59. Notably,

swift review of such applications is consistent with Congress' core intent in enacting the TCA—the establishment of a seamless, nationwide wireless network. Likewise, the availability of a damages remedy is consistent with Congress' purpose in enacting the TCA of promoting competition and placing limits on local regulation.

Petitioners advance various other reasons why this Court should take this case, having nothing to do with these parties or the Ninth Circuit's holding. For example, they argue that certiorari should be granted because § 332(c)(7) plaintiffs "'are [typically] large telecommunications companies'" faced off against "'small, rural municipalities'" that are not in a good position to defend themselves.[20] Pet. at 15-16 (citations omitted). Petitioners are describing the parties to another case—not this one. They also assert that "the ability to avoid the [TCA's] short limitations period" is an important factor virtually ensuring a flood of new litigation. *Id.* at 28. However, as previously discussed, the Ninth Circuit clearly held that a TCA plaintiff asserting § 1983 damage claims would have to file within the 30-day limitations period prescribed in the TCA—just as Abrams did here.

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[20] The Third Circuit (in a case involving Nextel) and the Seventh Circuit (in a case involving Verizon) made the same point. *Nextel*, 286 F.3d at 695; *Verizon Wireless*, 352 F.3d at 1152.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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July 1, 2004

APPENDICES

APPENDIX A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[Filed Apr 19 2004]

Case No.CV00-9071-SVW(RNBx)

MARK J. ABRAMS

vs.

CITY OF RANCHO PALOS VERDES, *et al.*

CIVIL MINUTES—GENERAL

Present: The Honorable Stephen V. Wilson, *U.S. District Judge*

Paul M. Cruz	N/A	N/A
Deputy Clerk	Court Reporter/Recorder	Tape No.

ATTORNEYS PRESENT FOR PLAINTIFFS: N/A

ATTORNEYS PRESENT FOR DEFENDANTS: N/A

PROCEEDINGS: IN CHAMBERS

Because the Ninth Circuit's ruling in *Abrams v. City of Rancho Palos Verdes*, 354 F.3d 1094 (9th Cir. 2004), has created a split in authority between the Ninth Circuit and the Third and Seventh Circuits and because Defendant City of Rancho Palos Verdes accordingly anticipates filing a Petition for a Writ of Certiorari with the United States Supreme Court, the Court hereby stays all proceedings in this matter until the Supreme Court has acted on the City's petition.

APPENDIX B

Expedited Judicial Review of Section 332
District Court Cases Cited in the Petition

The following list of cases appears in the order they were cited in the Petition.

District Court Cases	File Date	Decision Date	Appr. Time Lapse
Abrams v. City of Rancho Palos Verdes, No. 00-CV-09071 (C.D. Cal. 2002)	8/24/2000	1/9/2002	17 mos.
Sprint Spectrum, L.P. v. Town of Ogunquit, 175 F. Supp. 2d 77 (D. Me. 2001)	5/22/2001	12/12/2001	6 ½ mos.
AT & T Wireless PCS, Inc. v. City of Atlanta, 50 F. Supp. 2d 1352 (N.D. Ga. 1999), *vacated*, 210 F.3d 1322, *vacated*, 223 F.3d 1324 (11th Cir. 2000), *op. reinstated*, 250 F.3d 1307, *vacated on reh'g en banc*, 260 F.3d 1320 (11th Cir. 2001)	4/1/1998	6/14/1999	14 ½ mos.
Nextel Comms. of Mid-Atlantic, Inc. v. Town of Randolph, Mass., 193 F. Supp. 2d 311 (D. Mass. 2002)	12/13/2000	3/20/2002	15 mos.
National Telecomm. Advisors, Inc. v. City of Chicopee, 16 F. Supp. 2d 117 (D. Mass. 1998)	10/15/1997	8/11/1998	10 mos.
CIS Comms., L.L.C. v. County of Jefferson, Mo., 222 F. Supp. 2d 1148 (E.D. Mo. 2002)	7/23/2001	10/17/2002	15 mos.
Nextel Partners, Inc. v. Town of Amherst, N.Y., 251 F. Supp. 2d 1187 (W.D.N.Y. 2003)	9/19/2002	3/4/2003	5 ½ mos.

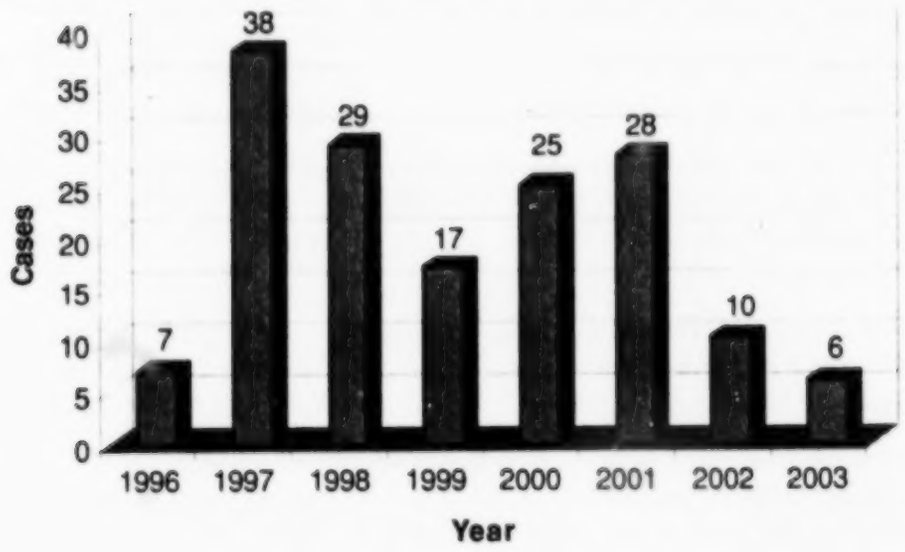
District Court Cases	File Date	Decision Date	Appr. Time Lapse
Omnipoint Holdings, Inc. v. Town of Westford, 206 F. Supp. 2d 166 (D. Mass. 2002)	7/19/2001	6/17/2002	11 mos.
APT Minneapolis, Inc. v. Stillwater Tp., No. 00-2500 JRT/FLN, 2001 WL 1640069 (D. Minn. June 22, 2001)	11/13/2000	6/22/2001	7 mos.
SBA Comms., Inc. v. Zoning Comm'n of Brookfield, 96 F. Supp. 2d 139 (D. Conn. 2000)	1/4/2000	5/1/2000	4 mos.
Smart SMR of N.Y., Inc. v. Zoning Comm'n of Stratford, 995 F. Supp. 52 (D. Conn 1998)	6/30/1997	2/17/1998	7 ½ mos.
Cellco P'ship v. Town Plan & Zoning Comm'n of Farmington, 3 F. Supp. 2d 178 (D. Conn. 1998)	10/8/1997	4/13/1998	6 mos.
Sprint Spectrum L.P. v. Town of Easton, 982 F. Supp. 47 (D. Mass. 1997)	2/11/1997	10/6/1997	8 mos.
Nextel Comms. of Mid-Atlantic, Inc. v. Town of Hanson, 311 F. Supp. 2d 142 (D. Mass. 2004)	12/19/2003	3/26/2004	3 mos.
APT Minneapolis, Inc. v. City of Maplewood, No. CIV. 97-2082, 1998 WL 634224 (D. Minn. Aug. 12, 1998)	9/15/1997	8/12/1998	11 mos.
Century Cellunet of S. Mich., Inc. v. City of Ferrysburg, 993 F. Supp. 1072 (W.D. Mich. 1997)	12/6/1996	11/10/1997	11 mos.

District Court Cases	File Date	Decision Date	Appr. Time Lapse
PrimeCo Pers. Comms. Ltd. P'ship v. Lake Cty., Fla., No. 97-208-CIV-OC-10B, 1998 WL 565036 (M.D. Fla. July 20, 1998)	6/27/1997	7/20/1998	13 mos.
Sprint Spectrum L.P. v. Jefferson Cty., 968 F. Supp. 1457 (N.D. Ala. 1997)	6/10/1997	7/31/1997	1 ½ mos.
BellSouth Mobility Inc. v. Gwinnett Cty., Ga., 944 F. Supp. 923 (N.D. Ga. 1996)	5/21/1996	8/13/1996	14 ½ mos.
AT & T Wireless Servs. of Fla., Inc. v. Orange Cty., 982 F. Supp. 856 (M.D. Fla. 1997)	12/12/1996	11/14/1997	11 mos.
Omnipoint Comms. MB Operations, LLC v. Town of Lincoln, 107 F. Supp. 2d 108 (D. Mass. 2000)	5/11/1999	8/2/2000	14 ½ mos.
National Tower, LLC v. Frey, 164 F. Supp. 2d 185 (D. Mass. 2001), *aff'd sub nom. National Tower, LLC v. Plainville Zoning Bd. of Apps.*, 297 F.3d 14 (1st Cir. 2002)	11/20/2000	9/12/2001	10 mos.
Cellular Tel. Co. v. Zoning Bd. of Adj. of Ho-Ho-Kus, 24 F. Supp. 2d 359 (D.N.J. 1998), *aff'd in part, rev'd in part*, 197 F.3d 64 (3d Cir. 1999)	7/7/1997	10/28/1998	15 ½ mos.
Virginia Metronet Inc. v. Board of Sup'rs of James City Cty., Va., 984 F. Supp. 966 (E.D. Va. 1998)	7/22/1997	1/15/1998	6 mos.

District Court Cases	File Date	Decision Date	Appr. Time Lapse
Omnipoint Corp. v. Zoning Hr'g Bd. of Pine Grove Tp., 20 F. Supp. 2d 875 (E.D. Pa. 1998), *aff'd*, 181 F.3d 403 (3d Cir. 1999)	11/19/1997	9/16/1998	10 mos.
Illinois RSA No. 3, Inc. v. County of Peoria, 963 F. Supp. 732 (C.D. Ill. 1997)	7/3/1996	4/28/1997	9 ½ mos.
PrimeCo Pers. Comms., L.P. v. Village of Fox Lake, 26 F. Supp. 2d 1052 (N.D. Ill. 1998)	11/18/1997	11/19/1998	12 mos.
American Towers, Inc. v. Williams, 146 F. Supp. 2d 27 (D.D.C. 2001), *aff'd*, 50 Fed. Appx. 448 (D.C. Cir. 2002)	10/11/2000	6/14/2001	8 mos.
		Mean:	10 mos.

APPENDIX C

Section 332 District Court Cases By Year of Filing



The district court cases listed in this chart were selected following a Lexis and Westlaw searches for opinions in which a district or appellate court discussed the role of Section 332 in resolving the dispute. Filing dates were determined using a combination of Lexis, Westlaw and Pacer.

Section 332 District Court Cases Per Year

1996 Cases (7 total):

AT & T Wireless Servs. of Fla., Inc. v. Orange Cty., 982 F. Supp. 856 (M.D. Fla. 1997)

BellSouth Mobility Inc. v. Gwinnett Cty., Ga., 944 F. Supp. 923 (N.D. Ga. 1996)

Century Cellunet of S. Mich., Inc.v. City of Ferrysburg, 993 F. Supp. 1072 (W.D. Mich. 1997)

Illinois RSA No. 3, Inc. v. County of Peoria, 963 F. Supp. 732 (C.D. Ill. 1997)

In re Appeal of Freeman, 975 F. Supp. 570 (D. Vt. 1997), *aff'd as modified sub nom. Freeman v. Burlington Broadcasters, Inc.*, 204 F.3d 311 (2d Cir.), *cert. denied*, 531 U.S. 917 (2000)

Seattle SMSA Ltd. P'ship v. San Juan Cty., 88 F. Supp. 2d 1128 (W.D. Wash. 1997)

Western PCS II Corp. v. Extraterritorial Zoning Auth. of Santa Fe, 957 F. Supp. 1230 (D.N.M. 1997)

1997 Cases (38 total):

APT Minneapolis, Inc. v. City of Maplewood, No. CIV. 97-2082, 1998 WL 634224 (D. Minn. Aug. 12, 1998)

APT Tampa/Orlando, Inc. v. Orange Cty. & Bd. of Comm'rs, No. 97-891-CIV-ORL-22, 1997 WL 33320573 (M.D. Fla. Dec. 10, 1997)

AT&T Wireless PCS, Inc. v. City Council of Va. Beach, 979 F. Supp. 416 (E.D. Va. 1997), *aff'd in part, rev'd in part*, 155 F.3d 423 (4th Cir. 1998)

AT&T Wireless PCS, Inc. v. City of Chamblee, 10 F. Supp. 2d 1326 (N.D. Ga. 1997)

AT & T Wireless PCS, Inc. v. Winston-Salem Zoning Bd. of Adj., 11 F. Supp. 2d 760 (M.D.N.C. 1998), *aff'd in part, rev'd in part*, 172 F.3d 307 (4th Cir. 1999)

Bell Atl. Mobile v. Zoning Bd. of Butler Tp., 138 F. Supp. 2d 668 (W.D. Pa. 2001)

Cellco P'ship v. Town Plan & Zoning Comm'n of Farmington, 3 F. Supp. 2d 178 (D. Conn. 1998)

Cellular Tel. Co. v. Board of Adj. of Paramus, 37 F. Supp. 2d 638 (D.N.J.), *aff'd*, 191 F.3d 444 (3d Cir. 1999)

Cellular Tel. Co. v. Town of Oyster Bay, No. 97-CV-641, 1998 U.S. Dist. LEXIS 21500 (E.D.N.Y. June 17, 1998), *aff'd in part, rev'd in part*, 155 F.3d 490 (2d Cir. 1999)

Cellular Tel. Co. v. Zoning Bd. of Adj. of Harrington Park, 90 F. Supp. 2d 557 (D.N.J. 2000)

Cellular Tel. Co. v. Zoning Bd. of Adj. of Ho-Ho-Kus, 24 F. Supp. 2d 359 (D.N.J. 1998), *aff'd in part, rev'd in part*, 197 F.3d 64 (3d Cir. 1999)

Flynn v. Burman, 30 F. Supp. 2d 68 (D. Mass. 1998)

Gearon & Co. v. Fulton Cty., Ga., 5 F. Supp. 2d 1351 (N.D. Ga. 1998)

GTE Mobilnet v. Pierce Tp., No. C-1-97-501, 1998 U.S. Dist. LEXIS 22007 (S.D. Ohio Nov. 6, 1998)

National Telecomm. Advisors, Inc. v. City of Chicopee, 16 F. Supp. 2d 117 (D. Mass. 1998)

Omnipoint Comms. Enters., Inc. v. Town of Amherst, N.H., 74 F. Supp. 2d 109 (D.N.H. 1998), *vacated*, 173 F.3d 9 (1st Cir. 1999)

Omnipoint Comms., Inc. v. City of Scranton, 36 F. Supp. 2d 222 (M.D. Pa. 1999)

Omnipoint Comms., Inc. v. Foster Tp., 46 F. Supp. 2d 396 (M.D. Pa. 1999)

Omnipoint Comms., Inc. v. Penn Forest Tp., 42 F. Supp. 2d 493 (M.D. Pa. 1999)

Omnipoint Comms., Inc. v. Zoning Hr'g Bd. of E. Pennsboro Tp., Cumberland Cty., Pa., 4 F. Supp. 2d 366 (M.D. Pa. 1998)

Omnipoint Corp. v. Zoning Hr'g Bd. of Pine Grove Tp., 20 F. Supp. 2d 875 (E.D. Pa. 1998), *aff'd*, 181 F.3d 403 (3d Cir. 1999)

OPM-USA-Inc. v. Board of Cty. Comm'rs of Brevard Cty., Fla., 7 F. Supp. 2d 1316 (M.D. Fla. 1997)

OPM-USA-Inc. v. County of Marion, Fla., No. 97-290-CIV-OC-10B, 1999 WL 1427699 (M.D. Fla. Sept. 30, 1999)

PrimeCo Pers. Comms., Ltd. P'ship v. Lake Cty., Fla., No. 97-208-CIV-OC-10B, 1998 WL 565036 (M.D. Fla. July 20, 1998)

PrimeCo Pers. Comms., L.P. v. Village of Fox Lake, 26 F. Supp. 2d 1052 (N.D. Ill. 1998)

Smart SMR of N.Y., Inc. v. Zoning Comm'n of Stratford, 995 F. Supp. 52 (D. Conn. 1998)

SNET Cellular, Inc. v. Angell, 99 F. Supp. 2d 190 (D.R.I. 2000)

Southwestern Bell Wireless, Inc. v. Board of Cty. Comm'rs of Johnson Cty., Kan., 17 F. Supp. 2d 1221 (D. Kan. 1998), *aff'd*, 199 F.3d 1185 (10th Cir. 1999), *cert. denied*, 530 U.S. 1204 (2000)

Sprint Spectrum, L.P. v. Board of Cty. of Comm'rs of Jefferson Cty., Colo., 59 F. Supp. 2d 1101 (D. Colo. 1999)

Sprint Spectrum L.P. v. City of Woburn, 8 F. Supp. 2d 118 (D. Mass. 1998)

Sprint Spectrum L.P. v. Jefferson Cty., 968 F. Supp. 1457 (N.D. Ala. 1997)

Sprint Spectrum L.P. v. Town of Easton, 982 F. Supp. 47 (D. Mass. 1997)

Sprint Spectrum L.P. v. Town of Farmington, No. 97-CV-863, 1997 WL 631104 (D. Conn. Oct. 6, 1997)

Sprint Spectrum, L.P. v. Town of N. Stonington, 12 F. Supp. 2d 247 (D. Conn. 1998)

Sprint Spectrum, L.P. v. Willoth, 996 F. Supp. 253 (W.D.N.Y. 1998), *aff'd*, 176 F.3d 630 (2d Cir. 1999)

Sprint Spectrum, L.P. v. Zoning Hr'g Bd. of E. Nottingham Tp., No. 97-1837, 1997 WL 688816 (E.D. Pa. Oct. 15, 1997)

U S WEST Comms., Inc. v. City of Vadnais Heights, No. 97-2248, 1998 U.S. Dist. LEXIS 22962 (D. Minn. May 15, 1998)

Virginia Metronet v. Board of Sup'rs of James City Cty., Va., 984 F. Supp. 966 (E.D. Va. 1998)

1998 Cases (29 total):

360 [Degrees] Comms. Co. v. Board of Sup'rs of Albermarle Cty., 50 F. Supp. 2d 551 (W.D. Va. 1999), *rev'd*, 211 F.3d 79 (4th Cir. 2000)

Aegerter v. City of Delafield, Wis., No. 98-C-192, 1998 WL 1057733 (E.D. Wis. May 5, 1998), *aff'd*, 174 F.3d 886 (7th Cir. 1999)

APT Pittsburgh Ltd. P'ship v. Lower Yoder Tp., Cambria Cty., 111 F. Supp. 2d 664 (W.D. Pa. 2000)

APT Pittsburgh Ltd. P'ship v. Penn Tp., Butler Cty., Pa., 32 F. Supp. 2d 793 (W.D. Pa. 1998), *rev'd*, 196 F.3d 469 (3d Cir. 1999)

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